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Third Court of Appeals
Austin, Texas

VIA: Electronic Filing

**Re: Cause No. 03-18-00153-CV; Texas Department of
Transportation v. Albert Lara, Jr.**

To the Honorable Court:

As the Court is aware, this case is on remand from the Supreme Court of Texas. The Supreme Court of Texas' *Opinion* affirmed this Court's holding on two of the three claims at issue: retaliation and failure to accommodate. *Opinion*, p. 25. The third claim, disability discrimination under Section 21.051 of the Texas Commission on Human Rights Act, is the sole cause of action at issue in this proceeding.

The Supreme Court of Texas held that Plaintiff-Appellant Albert Lara, Jr. pled a claim for disability discrimination. *Opinion*, p. 24. The only element of that cause of action at issue is causation. *Id.* The Court remanded this single issue for adjudication. *Opinion*, p. 25.

If the Court believes that additional briefing would be helpful, we are happy to provide it. However, we believe the existing briefing settles this point in Lara's favor.

Lara must simply show—and at this point, present evidence to raise a fact issue—that he suffered an adverse employment decision because of his disability. *Opinion*, pp. 24-25. In this review, the Court

accepts as true all evidence favorable to Lara, the non-movant, indulges all inferences, and resolves all doubts in his favor. *Opinion*, p. 8.

The briefing and record show—and at the very least, raise a fact issue—that TxDOT fired Lara because of his disability. TxDOT’s representatives testified that they decided to fire Lara because he was unable to come to work “due to his limitations” as outlined in his medical paperwork and because “he was recovering” from his disability CR.392-93.¹

And TxDOT’s Letter terminating Lara reflects the same. CR.442. In terminating Lara, TxDOT, specifically referenced Lara’s medical paperwork that showed his disability and referenced his return-to-work date of October 21. *Id.* Leaving little room for doubt, once Lara recovered from his disability, TxDOT invited Lara to apply for his position again. *Id.*

The briefing and record also raise a fact issue that any proffered reason to the contrary is mere pretext.² Chief among this evidence is TxDOT’s violation of its mandatory leave policies to accommodate those, like Lara, in need of leave. CR.446. Lara’s supervisors admitted:

- They were aware of the accommodation policies. CR.370-75 (Powell); 396-97 (Simmons).
- The policies were mandatory. CR.396-97 (Simmons); CR.410 (Hollick).
- It would be “unethical” not to follow the policies. CR.423 (Hollick).
- TxDOT had extended leave to other employees in the past. CR.373 (Powell).

¹ *Appellee’s Brief*, pp. 34-36; *Lara’s Brief on the Merits*, 73-76.

² *Appellee’s Brief*, pp. 34-36; *Lara’s Brief on the Merits*, 73-76; *Lara’s Reply Brief on the Merits*, 22-27.


Despite well-established procedures in place to assist to those like Lara, TxDOT fired him instead, specifically referencing his medical condition, disability, and limitations in doing so. CR.442. This evidence creates a fact issue that TxDOT fire Lara because of his disability and serves as evidence of pretext.

Taking Lara's evidence as true, indulging every reasonable inference, and resolving all doubts in his favor, the evidence creates a fact issue that TxDOT fired Lara because of his disability. As a result, affirming the trial court's order and remanding for a jury trial are appropriate.

If we can provide any other information or authorities to the Court, we are happy to do so.

Sincerely,

SCANES & ROUTH, LLP



By:

Tyler Talbert

CERTIFICATE OF SERVICE

I certify that a copy of this Letter was served by delivering it to the following by electronic service:

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/s/ Tyler Talbert

Tyler Talbert

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